

# THE INJURED WORKER

## Rights to Workers' Compensation Benefits and How to Obtain Them



### Department of Industrial Relations Division of Workers' Compensation

*The information in this pamphlet is true in most situations. However some rules, exceptions, and deadlines not covered here may apply to you and affect your case. To learn more, see the factsheet For More Information. The information here describes the California workers' compensation system as of January 1998. It applies to most private, state, and local government employees whose date of injury is 1994 or later.*

ANY PERSON WHO MAKES OR CAUSES TO BE MADE ANY KNOWINGLY FALSE OR FRAUDULENT MATERIAL STATEMENT OR MATERIAL REPRESENTATION FOR THE PURPOSE OF OBTAINING OR DENYING WORKERS' COMPENSATION BENEFITS OR PAYMENTS IS GUILTY OF A FELONY.

*This pamphlet has been approved by the Administrative Director of the Division of Workers' Compensation and complies with the requirements of Labor Code §138.4, §139.6, §3553, and §5401 and Title 8, California Code of Regulations §9880 and §9882. It is based, in large part, on work performed by the Labor Occupational Health Program, University of California at Berkeley, under contract with the Commission on Health & Safety and Workers' Compensation.*



### What Is Workers' Compensation?

If you get an injury or illness on the job, your employer is required by law to provide workers' compensation benefits. You could get hurt by:

- One event at work. Examples: hurting your back in a fall, getting burned by a chemical that splashes on your skin, getting hurt in a car accident while making deliveries. It may include injuries, including psychiatric injuries, resulting from a workplace crime.
- or-
- Repeated exposures at work. Examples: hurting your wrist from doing the same motion over and over, losing your hearing because of constant loud noise.

### What Are The Benefits?

Workers' compensation benefits can include:

**Medical Care.** Paid by your employer, to help you recover from an injury or illness caused by work. You should never receive a medical bill.

**Temporary Disability Benefits.** Payments if you lose wages because you can't do your usual job while recovering. As a general rule, you are paid two-thirds of the gross (pre-tax) wages you lose after your third day off work while recovering from an injury. However, you cannot receive more than the maximum weekly amount set by law. (See Table on page 5 for maximum benefit rates.) These temporary disability payments begin when your treating doctor says you can't do your usual work for more than

three days, or you are hospitalized overnight. Payments must be made every two weeks, for as long as you are eligible.

**Permanent Disability Benefits.** Payments if your treating doctor says you will never recover completely and will always be somewhat limited in your ability to work. These payments are limited, and may not cover all your lost income. The number of weekly payments you will receive is determined by a permanent disability rating, based on (a) your medical condition, (b) your date of injury, (c) your age when injured, and (d) your occupation. Permanent disability benefit amounts are set by law. (See Table on page 5 for maximum benefit rates.) After the first

**What are the Benefits**  
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payment, permanent disability benefits must be paid every 14 days. They end when you reach the maximum amount allowed by law or when you settle your case and receive a lump sum.

**Vocational Rehabilitation.** Job placement counseling and possibly retraining, if you are unable to return to your old job and your employer doesn't offer other work. Vocational rehabilitation maintenance allowance benefits provide income support while you are participating in vocational rehabilitation. These

payments are made every 14 days for as long as you are eligible. For injuries occurring on or after January 1, 1994, there is a \$16,000 limit on all rehabilitation benefits. (See Table on page 5 for maximum benefit rates.)

**Death Benefits.** Payments to the spouse, children, or other dependents of a worker who dies from a job injury or illness. (See table on page 5 for maximum benefit rates) Death benefits must be paid every 14 days. A burial allowance is also paid.

## **More About Medical Care**

Can I choose the doctor who will treat me? It depends. If you want to choose the doctor who will treat you for a job injury or illness, you must tell your employer the name and address of your personal physician before you are injured or become ill. You must do it in writing. This is called predesignating your personal physician. If you predesignate you will be allowed to see your personal physician right after you are injured or become ill. You may switch doctors later, if necessary. If you don't predesignate your employer usually will have the right to choose the doctor who

## **What Should I Do If Hurt On The Job?**

If you are hurt on the job, you should:

- **Report The Injury To Your Employer.** Tell your supervisor right away. If your injury or illness developed gradually (like tendinitis or hearing loss), report it as soon as you learn it was caused by your job. Reporting promptly helps prevent problems and delays in receiving benefits, including medical care you may need to avoid further injury. If your employer does not learn of your injury within 30 days, you could lose your right to receive workers' compensation benefits.
- **Get Emergency Treatment If Needed.** If it's a medical emergency, go to an emergency room right away. Your employer may tell you where to go for treatment. Tell the health care provider who treats you that your injury or illness is job related.
- **Fill Out A Claim Form.** Your employer must give you a claim form within one working day after learning about your injury or illness. You use it to request workers' compensation benefits. Fill out and sign the employee portion of the claim form. Describe your injury completely. Include every part of your body affected by the injury. Give the form to your employer, which is called filing the claim form.
- **Get Good Medical Care.** Get good medical care to help you recover. You should be treated by a doctor who understands your particular type of injury or illness. Tell the doctor about your symptoms and the events at work that you believe caused them. Also, describe your job and your work environment.
- **What Happens After I File The Claim Form?** Your employer must fill out and sign the employer's portion of the claim form and give the completed form to a claims administrator. (This person handles claims for your employer and usually works for your employer's insurance company.) Your employer must give you a copy of the completed form within one working day after you filed it. Keep this copy. The claims administrator usually must decide within 90 days whether to accept or deny your claim.

treats you during the first 30 days after your employer learns about your injury or illness.

**How do I predesignate?** You can predesignate a doctor of medicine (M.D.) or doctor of osteopathy (D.O.) who treated you in the past and has your medical records. Or you can predesignate the office, clinic or hospital where the doctor treated you. (If you give your employer the name of your personal chiropractor in writing before you are injured, you may switch to this chiropractor upon request during the first 30 days.)

**Notify your employer in writing.** Your employer may give you a form to use. Make sure to include the following information:

- 1) Name of your employer.
- 2) Statement that if you are injured or become ill on the job, you designate your personal physician or personal physician's medical facility to provide medical care. Give the name, address, and phone number.
- 3) Your name.
- 4) Your signature.
- 5) Date.

**Exceptions:** Some employers have contracts with state-certified health care organizations (HCOs) to treat workers hurt on the job. If your employer has this kind of contract, there are different rules on choosing medical care. Your employer must give you written information about those rules.

- **Why is the choice of doctor important?** Your treating doctor will:

- 1) Decide what type of medical care you'll get.
- 2) Help identify the kinds of work you can do safely while recovering.
- 3) Determine when you can return to work.
- 4) Write medical reports that will affect the benefits you receive.

## What Should I Do If There is a Dispute?

If you have a concern, speak up. See whether your employer or claims administrator can agree to resolve the problem. If this doesn't work, don't delay getting help. Try the following:

- Contact an Information & Assistance officer. State I & A officers answer questions and help injured workers. They may provide information and provide forms and help resolve problems with your claim. They hold workshops for injured workers. To contact or find a local office, check the Government Pages at the front of the white pages of your phone book. Look under: State Government Offices/ Industrial Relations/Workers' Compensation.
- Consult an Attorney. Lawyers who specialize in helping injured workers with their workers' compensation claims are called applicants' attorneys. Their job is to plan a strategy for your case,

gather information to support your claim, keep track of deadlines, and represent you in hearings before a Referee (workers' compensation judge) of the Workers' Compensation Appeals Board. Most attorneys offer one free consultation. If you hire an attorney, the attorney's fees will be taken out of benefits that you receive later. A Referee must approve the fee.

If you have a serious dispute that may require a decision by a workers' compensation referee (workers' compensation judge), an Application for Adjudication must be timely filed, normally within one year from the date of your injury or the last date you were paid benefits.

## What Other Rights Do I Have?

It is illegal for your employer to punish or fire you for having a job injury, or for filing a workers' compensation claim when hurt on the job. The California Labor Code (section 132a) prohibits this kind of discrimination.

It's also illegal for your employer to discriminate against you because of a serious disability. The federal Americans with Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA) prohibit this. More information about ADA is available by calling the Equal Employment Opportunity Commission at 800-669-3362. Information about the state FEHA is available by calling 800-884-1684.

# Workers' Compensation Maximum Benefits

FOR DATES OF INJURY ON OR AFTER:	7/1/94	7/1/95	7/1/96
<b>MAXIMUM WEEKLY TEMPORARY DISABILITY PAYMENT:</b>	\$406.00	\$448.00	\$490.00
<b>MAXIMUM WEEKLY PERMANENT DISABILITY PAYMENT:</b>			
0 - 14 $\frac{3}{4}\%$	\$140.00	\$140.00	\$140.00
15 - 24 $\frac{3}{4}\%$	\$148.00	\$154.00	\$160.00
25 - 69 $\frac{3}{4}\%$	\$158.00	\$164.00	\$170.00
70 - 99 $\frac{3}{4}\%$	\$168.00	\$198.00	\$230.00
100%	\$406.00	\$448.00	\$490.00
<b>MAXIMUM WEEKLY VOCATIONAL REHABILITATION MAINTENANCE ALLOWANCE:</b>	\$246.00	\$246.00	\$246.00
<b>MAXIMUM WEEKLY DEATH BENEFIT PAYMENT:</b>	\$406.00	\$448.00	\$490.00
<b>MAXIMUM AGGREGATE DEATH BENEFITS*</b>			
Single Dependents	\$115,000.00	\$115,000.00	\$125,000.00
Two Dependents	\$115,000.00	\$135,000.00	\$145,000.00
Three or More Dependents	\$150,000.00	\$150,000.00	\$160,000.00
<b>BURIAL EXPENSES PAID TO A MAXIMUM OF \$5,000</b>			

*\*Benefits paid to a totally dependent minor will be continued until the age of 18 regardless of the maximum benefit.*

# DWC PUBLICATIONS AND FACTSHEETS

Go to DWC's web site [HYPERLINK http://www.dir.ca.gov](http://www.dir.ca.gov)

[www.dir.ca.gov](http://www.dir.ca.gov) and link to DWC or Commission on Health & Safety & Workers' Compensation.

Call 1-800-736-7401 and leave a voice form message.

Write DWC at P. O. Box 420603, San Francisco, CA 94142 and specify the publication you would like to receive.

Call the local DWC office found in the white pages under State Government/Industrial Relations/Workers' Compensation.

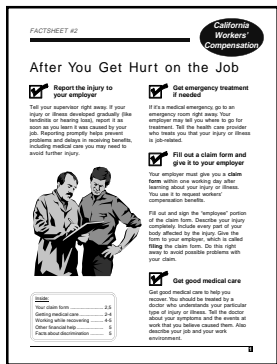
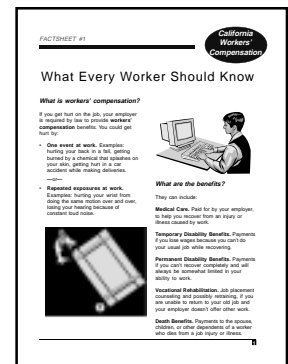
## Factsheets

## What Every Worker Should Know (#1)

(Workers' compensation benefits and choosing a doctor in case you are hurt.)

## After You Get Hurt on the Job (#2)

(Steps to take, getting appropriate medical care, working while recovering, other financial help, and job discrimination.)

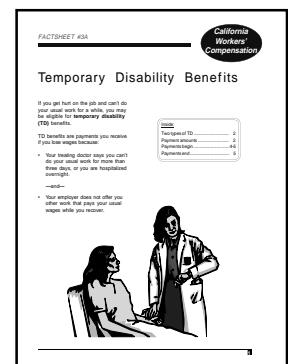


## Temporary Disability Benefits (#3A)

(Benefits while you are recovering from a job injury or illness.)

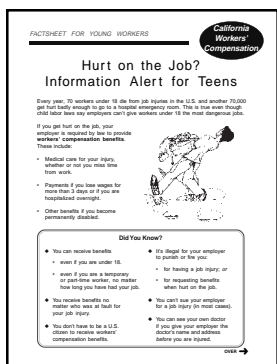
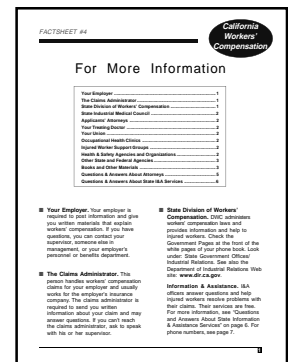
## Permanent Disability Benefits (#3B)

(Medical reports, ratings, payments, and settlements.)



## For More Information (#4)

(Written materials, places to seek help with your claim, and other types of assistance.)



## Hurt on the Job? Information Alert for Teens

(Factsheet for young workers.)  
**Injured Worker Guides:**



## These guides contain short instructions on how to complete a step in your claim.

### **Guide 01**

- ☐ How to File a Claim Form

### **Guide 02**

- ☐ How to Dismiss Your Attorney

### **Guide 03**

- ☐ How to File a Complaint with the Audit Unit

### **Guide 04**

- ☐ How to Request a Qualified Medical Evaluation

### **Guide 05**

- ☐ How to File a Petition for Commutation

### **Guide 06**

- ☐ How to File a Petition for Reconsideration

### **Guide 07**

- ☐ How to File a Declaration of Readiness to Proceed

### **Guide 08**

- ☐ How to File a Rehabilitation Appeal

### **Guide 09**

- ☐ How to File a Serious & Willful Misconduct Petition

### **Guide 10**

- ☐ How to File an Application for Adjudication of Claim

### **Guide 11**

- ☐ How to File a Petition for Discrimination  
(Labor Code 132a)

### **Guide 12**

- ☐ How to File a Petition to Reopen

### **Guide 13**

- ☐ How to Object to Your Summary Rating

### **Guide 14**

- ☐ How to File a Lien

## **Other Publications:**

- ☐ Help in Returning to Work 1994  
ñ a guide to vocational rehabilitation
- ☐ Your Medical Evaluation  
(produced by Industrial Medical Council)